

90-314/

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JAN 12 1994

In the Matter of

)

FCC 93-451

)

Amendment of the Commission's
Rules to Establish New Personal
Communications Services

)

GEN Docket No. 90-314, FCC 93-451 58 Fed. Reg. 59,174 (1993) ("Second R&O").

)

RM-7140, RM-7175, RM-7618

To: The Commission

**CONSOLIDATED REPLY TO OPPOSITIONS AND COMMENTS TO
PETITION FOR RECONSIDERATION**

The Rural Cellular Association ("RCA"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, respectfully submits its Reply to the comments and oppositions of various parties to its December 8, 1993, Petition for Reconsideration of the Commission's "Second Report and Order" in Amendment of the Commission's Rules to Establish New Personal Communications Services, Gen. Docket No. 90-314, FCC 93-451 58 Fed. Reg. 59,174 (1993) ("Second R&O"). The RCA limits its Reply to those parties' who propose modifications to the Commission's rules for the provision of Personal Communications Services ("PCS") which deviate from the Commission's statutory obligation under the Omnibus Budget Reconciliation Act of 1993 ("Budget Act") to ensure rapid deployment of PCS to rural areas and meaningful opportunities for rural telephone companies to participate in the provision of PCS.

I. In Order To Ensure The Availability of PCS In Rural Areas, Rural Telcos Should Be Exempt From The Cellular Attribution Rules.

1. The Commission's current cellular ownership attribution rules are arbitrary and capricious, especially when applied to

No. of Copies rec'd
List ABCDE

0411

rural telephone companies whose cellular interests cannot possibly be considered to represent undue market power.¹ In light of the Congressional mandate both to ensure PCS availability in rural areas and to promote the opportunity for rural telephone companies to participate in this new service,² and the acknowledged history of the successful deployment of sophisticated telecommunications services by rural telephone companies, the Commission should permit all rural telephone companies regardless of whether they have attributable cellular interests to provide PCS in their cellular service areas.

2. As noted by GTE,³ the record clearly supports modification or elimination of the cellular eligibility standards for rural telephone companies. The Commission's established market approach ensures that PCS will be offered on a competitive basis and that allegations of potential anticompetitive behavior are not

¹ See Petition for Reconsideration of RCA at p. 4.

² Congress specifically ordered the Commission to award licenses for new technologies, including PCS, in a manner that promotes the following objectives:

1) the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays; and

2) the promotion of accessibility of new technology to the public by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.

See Budget Act, Section 309(j)(3).

³ Comments of GTE at p. 2.

supportable.⁴ Additionally, McCaw Cellular Communications, Inc. ("McCaw") depicts how illogical spectrum warehousing by cellular carriers is in its Comments.⁵ The RCA agrees with McCaw's assessment that the tremendous auction costs and onerous build-out requirements along with potentially as many as six PCS licensees is a sufficient deterrent to spectrum warehousing.

3. With regard to rural telephone companies, both MCI and General Communications, Inc. ("GCI") choose to ignore both the basic nature of rural areas and the significant issue of service deployment when focusing on the purported "pro-competitive" benefits of rendering cellular carriers ineligible in rural areas.⁶ Contrary to these assertions, rural telephone companies, regardless of the nature or amount of their cellular interests, are not in a position to frustrate competition. Rural telephone companies provide the best, if not the only, hope to ensure that rural areas enjoy the benefits of PCS. The RCA submits that the licensing design adopted by the Commission guarantees a competitive framework. Consequently, any additional, arbitrary entry barriers are needless and should be discarded, especially when such restrictions will prevent the Commission from successfully carrying out its Congressional mandate. Accordingly, the RCA restates its position, as supported by the record in this proceeding, that the

⁴ Id.

⁵ Comments of McCaw Cellular Communications at p. 3.

⁶ MCI Opposition at p. 15; Comments and Opposition of GCI at pp. 7-8.

eligibility of qualified rural telephone companies to participate in the provision of PCS should not be subject to any cellular ownership restrictions.

II. Shortening The PCS Build Out Requirements Will Ensure That PCS Comes To Rural America.

4. The record reflects agreement with the RCA's position that the benchmark service requirements,⁷ which are not based upon geographic coverage, will result in the concentration of serving more densely populated areas to the disadvantage of rural populations.⁸ The RCA's proposal to modify the rules to require all PCS licensees to relinquish their rights to any unserved portion of the market at the end of the seventh year of the license period fulfills the Congressional mandate to ensure service to rural America.

5. MCI incorrectly cites to the RCA's proposed modification of the rules as an example of de jure elimination of the PCS construction deadlines when, in fact, the RCA seeks to hold PCS licensees' "feet to the fire" in an effort to ensure that service does reach rural areas prior to the end of the initial ten year

⁷ The Second R&O requires that service benchmarks be met to retain licenses. One-third of the population within each market area must be served within five years of licensing; two-thirds within seven years; and ninety percent of the population must be served within ten years of being licensed. Second R&O at ¶ 134.

⁸ See Petitions for Reconsideration filed by Alliance of Rural Telephone and Cellular Service Providers pp. 5-6; Columbia Cellular Corporation p. 5; Duncan, Weinberg, Miller & Pembroke p. 3; Pacific Bell and Nevada Bell pp. 5-6; MEBTEL pp. 2-3 and National Telephone Cooperative Association ("NTCA") pp. 8-10.

license term.⁹ The RCA believes that MCI, having not participated in the cellular RSA build-out process, is simply not familiar with the small miracles rural telephone companies have achieved in bringing cellular service and other new technologies to sparsely populated areas. In contrast to MCI's assertions, the RCA reminds the Commission that the process of providing advanced telecommunications services to rural areas can only continue to occur if rural telephone companies are allowed the meaningful opportunity to participate in the provision of new services in rural areas.

III. PCS Licensees Should Be Given The Ability To Partition Their Markets.

6. The RCA's proposal to formalize the rules to include the provision to partition PCS markets as a method of meeting the Congressional mandate to ensure prompt delivery of service to rural areas which otherwise would await build-out requirements or perhaps never receive service is generally supported by the record.¹⁰ Those parties opposed to allowing the partitioning of PCS markets do not object to the indisputable public interest benefits which would result from adoption of a partitioning policy. Rather, these

⁹ MCI Opposition at pp. 17 - 18.

¹⁰ See e.g., Comments of Telocator at p. 6; Comments of GTE Service Corporation at pp. 9-10; Opposition to Petitions for Reconsideration of Citizens Utilities Company at pp. 10-11; Comments of McCaw Cellular Communications, Inc. at p. 23. See also Petition for Reconsideration of U.S. Intelco Networks, Inc. at p. 7; Petition for Reconsideration of the Alliance of Rural Area Telephone and Cellular Service Providers at p. 2; Petition for Reconsideration of Columbia Cellular Corporation at p. 2.

parties are engaged in unfounded speculation as to its influence on licensees and the licensing process, rather than the associated public interest benefits -- rapid deployment of service.

6. For instance, Nextel Communications, Inc. ("Nextel") confuses the interests of the public with the business interests of potential licensees by arguing that speculation in licenses will occur if partitioning is allowed because it could "inject additional variables into the initial auction process and complicate the development of an orderly aftermarket."¹¹ Such a statement inappropriately and selfishly assumes that the Commission is to give the same consideration to the business interests of potential PCS licensees as it gives to the public interest. In this case, the public interest is served by ensuring nationwide deployment of PCS. Furthermore, the RCA observes that adoption of a partitioning policy will provide even more concrete and uniformly available information to participants in the auction process than would otherwise result from each participant's speculation about the shape and dynamics of the eventual "aftermarket." Accordingly, Nextel's argument should be disregarded by the Commission.

7. MCI opposes partitioning, arguing that "excessive" partitioning will increase the complexity and cost of coordinating frequency use and avoiding interference.¹² The number of cellular market areas which have been partitioned attest to the fact that

¹¹ Nextel's Opposition to Petitions for Reconsideration at p. 13.

¹² MCI Opposition at p. 4.

the burden to frequency coordinate is not a relevant cost concern.¹³ Again, MCI, having not participated in the provision of cellular service in rural areas, clearly does not understand the importance and relevance of permitting partitioning. Congress had the foresight to protect rural constituents by mandating that rural areas be ensured the prompt delivery of new technological services. Partitioning would be instrumental in assuring that those living in rural areas obtain service. Consequently, MCI's speculative, unsupported argument should be ignored by the Commission.

8. MCI also speculates that partitioning is susceptible to manipulation and could facilitate avoidance of the buildout rules.¹⁴ MCI is once again engaging in pure conjecture, and completely ignores the fact that full compliance with existing build-out rules will result in denial of service to rural areas. Furthermore, abuse of the Commission's processes and willful evasion of licensee obligations may be dealt with under existing Commission rules and procedures. It would be an abuse of the public trust to formulate rules which serve MCI's purpose and result in denial of service to rural communities across the country, especially when relief to the issue raised by MCI already exists.

9. General Communication, Inc. ("GCI") argues that

¹³ According to internal FCC records, over 77 RSA cellular markets have been partitioned into smaller license areas. Some of these markets have been subdivided into as many as six separate license areas proving that coordinating frequency use and interference avoidance between systems is not a real cost concern.

¹⁴ MCI Opposition at p.4.

partitioning is not in the public interest because it would result in multiplicity of very small, possibly incompatible systems.¹⁵ While the RCA agrees that partitioning may result in a greater number of independent systems than would otherwise develop, there is no indication whatsoever that these systems would be "incompatible." In fact, the Commission may take notice of the fact that the history of cellular partitioning disproves that theory. Moreover, rural cellular carriers have consistently demonstrated their ability, given the existence of market demand, to ensure seamless service delivery.¹⁶

10. Most importantly, GCI ignores, as do the other opponents to partitioning, the special circumstances of more rural areas, dooming them to an eventual "trickle-down" of services designed to meet the needs of the larger metropolitan areas. These and other opponents' comments reflect a pervasive, and perhaps conscious, reluctance to acknowledge the ability and dedication of rural telephone companies to meet these challenges and ensure that the communications requirements of rural areas are met. Having no evidence on the record that partitioning will disserve the public, the Commission should formalize liberal partitioning policies to ensure the provision of PCS to rural areas.

¹⁵ Comments and Opposition of General Communication, Inc. at p. 15.

¹⁶ It is incongruous that, with respect to the issue of partitioning, GCI conveniently chooses to disregard the public interest inherent in quickly deploying national service, the very point which GCI unyieldingly supports and employs as the justification for its opposition to any modification of build-out requirements. Id. at pp. 13-14.


IV. CONCLUSION

11. Congress has explicitly defined the public interest as requiring special regard to and accommodation of the needs of rural America. It has recognized the desirability of fostering participation by rural telephone companies in the provision of PCS. The RCA, therefore, respectfully submits that adherence to the Congressional mandate through the modification of the rules as urged by the RCA will best serve the public interest.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

By:


Stephen G. Kraskin
Caressa D. Bennet

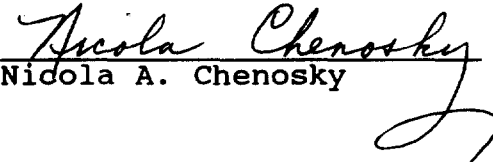
Its Attorneys

Kraskin & Associates
2120 L Street, N.W., Suite 810
Washington, D.C. 20037
(202) 296-8890

Dated: January 12, 1994

Certificate of Service

I, Nicola A. Chenosky, of Kraskin & Associates, 2120 L Street, NW, Suite 810, Washington, DC 20037, hereby certify that copies of the foregoing Consolidated Reply to Oppositions and Comments to Petition for Reconsideration were served on the 12th day of January, by first class, U.S. mail, postage prepaid, to the following:


Nicola A. Chenosky

* Via Hand Delivery

Chairman Reed Hundt *
Federal Communications Commission
1919 M Street, NW, Room 814
Washington, DC 20554

Commissioner James H. Quello *
Federal Communications Commission
1919 M Street, NW, Room 802
Washington, DC 20554

Commissioner Andrew C. Barrett *
Federal Communications Commission
1919 M Street, NW, Room 826
Washington, DC 20554

Commissioner Ervin S. Duggan *
Federal Communications Commission
1919 M Street, NW, Room 832
Washington, DC 20554

Thomas P. Stanley, Chief Engineer *
Office of Engineering and Technology
Federal Communications Commission
2025 M Street, NW, Room 7002
Washington, DC 20554

Bruce A. Franca, Deputy Chief *
Office of Engineering and Technology
Federal Communications Commission
2025 M Street, NW, Room 7002
Washington, DC 20554

David R. Siddall, Esq., Chief - Frequency Allocation Branch *
Office of Engineering and Technology
Federal Communications Commission
2025 M Street, NW, Room 7102
Washington, DC 20554

Robert Pepper, Chief *
Office of Plans and Policy
Federal Communications Commission
1919 M Street, NW, Room 822
Washington, DC 20554

Ralph Haller, Chief *
Private Radio Bureau
Federal Communications Commission
2025 M Street, NW, Room 5002
Washington, DC 20554

Kathleen Levitz, Acting Chief *
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, Room 500
Washington, DC 20554

International Transcription Service *
Federal Communications Commission
1919 M Street, NW, Room 246
Washington, DC 20554

Michael D. Kennedy, Director - Regulatory Relations
Stuart E. Overby, Manager - Regulatory Programs
Mary E. Brooner, Manager - Regulatory Policies
Motorola, Inc.
Government Relations Office
1350 I Street, NW, Suite 400
Washington, DC 20005

Catherine Wang
Margaret M. Charles
Swidler & Berlin, Chartered
3000 K Street, NW, Suite 300
Washington, DC 20007
Counsel for SpectraLink Corporation

William E. Stanton, Executive Director
National Emergency Number Association
P.O. Box 1190
Coshocton, OH 43812-6190

James R. Hobson
Donelan, Cleary, Wood & Maser, PC
1275 K Street, NW, Suite 850
Washington, DC 20005-4078
Counsel for National Emergency Number Association

Michael F. Altschul, V.P. - General Counsel
Cellular Telecommunications Industry Association
Two Lafayette Centre, 3rd Floor
1133 21st Street, NW
Washington, DC 20036

Philip L. Verveer, Daniel R. Hunter
Jennifer A. Donaldson and Francis M. Buono
Willkie, Farr & Gallagher
Three Lafayette Centre, Suite 600
1155 21st Street, NW
Washington, DC 20036-3384
Counsel for Cellular Telecommunications Industry Association

James P. Tuthill
Theresa L. Cabral
Betsy Stover Granger
140 New Montgomery Street, Room 1525
San Francisco, CA 94105
Counsel for Pacific Bell and Nevada Bell

James L. Wurtz
1275 Pennsylvania Avenue, NW
Washington, DC 20004
Counsel for Pacific Bell and Nevada Bell

Jack Taylor, Esq.
InterDigital Communications Corporation
9215 Rancho Drive
Elk Grove, CA 95624

Kathy L. Shobert, Director - Federal Regulatory Affairs
General Communication, Inc.
888 16th Street, NW, Suite 600
Washington, DC 20006

Edward R. Wholl
Jacqueline E. Holmes Nethersole
120 Bloomingdale Road
White Plains, NY 10605
Counsel for NYNEX Corporation

Scott K. Morris, Vice President - Law
McCaw Cellular Communications, Inc.
5400 Carillon Point
Kirkland, Washington 98033

R. Gerard Salemme, Sr. V.P. - Federal Affairs
Cathleen A. Massey, Sr. Regulatory Counsel
McCaw Cellular Communications, Inc.
1150 Connecticut Avenue, NW, 4th Floor
Washington, DC 20036

R. Michael Senkowski
Robert J. Butler
Suzanne Yelen
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006
Counsel for UTAM, Inc.

Veronica M. Ahern
Albert Shuldiner
Nixon, Hargrave, Devans & Doyle
One Thomas Circle, NW
Suite 800
Washington, DC 20005
Counsel for QUALCOMM

Stephen L. Goodman
Halprin, Temple & Goodman
1301 K Street, NW
Suite 1020, East Tower
Washington, DC 20005
Counsel for Northern Telecom Inc.

John G. Lamb, Jr.
Northern Telecom Inc.
2100 Lakeside Boulevard
Richardson, TX 75081-1599

Peter Kozdon
Manager, System Architecture
ROLM, a Siemens Company
4900 Old Ironside Drive
Santa Clara, CA 95052-8075

Ellen S. Deutsch
Jacqueline R. Kinney
Citizens Utilities Company
P.O. Box 340
8920 Emerald Park Drive, Suite C
Elk Grove, CA 95759-0340

Larry A. Blosser
Donald J. Elardo
MCI Telecommunications Corp.
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Thomas A. Stroup
Mark J. Golden
Telocator, The Personal
Communications Industry Association
1019 19th Street, NW
Washington, DC 20036

Carl W. Northrop
Bryan Cave
700 13th Street, NW, Suite 700
Washington, DC 20005
Counsel for George E. Murray

George Y. Wheeler
Peter M. Connolly
Koteen & Naftalin
1150 Connecticut Avenue, NW, Suite 1000
Washington, DC 20036
Counsel for Telephone and Data Systems, Inc.

Robert S. Foosaner
Lawrence E. Krevor
Nextel Communications, Inc.
601 13th Street, NW, Suite 1100 South
Washington, DC 20005

Gail L. Polivy
GTE Service Corporation
1850 M Street, NW, Suite 1200
Washington, DC 20036

Jay C. Keithley
Leon M. Kestenbaum
Sprint Corporation
1850 M Street, NW, Suite 1100
Washington, DC 20036

Kevin C. Gallagher
Centel Cellular Company
8725 Higgins Road
Chicago, IL 60631

W. Richard Morris
P.O. Box 11315
Kansas City, MO 64112

David C. Jatlow
Young & Jatlow
2300 N Street, NW, Suite 600
Washington, DC 20037
Counsel for The Ericsson Corporation

Robert J. Miller
Gardere & Wynne, L.L.P.
1601 Elm Street, Suite 3000
Dallas, Texas 75201
Counsel for Alcatel Network Systems, Inc.

Jonathan D. Blake
Kurt A. Wimmer
Covington & Burling
1201 Pennsylvania Avenue, NW
P.O. Box 7566
Washington, DC 20044
Counsel for American Personal Communications

J. Barclay Jones
Vice President, Engineering
American Personal Communications
1025 Connecticut Avenue, NW
Washington, DC 20035

Martin T. McCue
Linda Kent
United States Telephone Association
1401 H Street, NW, Suite 600
Washington, DC 20005-2136

John S. Logan
Jonathan M. Levy
Dow, Lohnes & Albertson
1255 23rd Street, NW, Suite 500
Washington, DC 20037
Counsel for Cellular Information Systems, Inc.

Gary M. Epstein
Nicholas W. Allard
James H. Barker
Latham & Watkins
1001 Pennsylvania Ave., NW, Suite 1300
Washington, DC 20004-2505
Counsel for Bell Atlantic Personal Communications, Inc.

William J. Franklin
William J. Franklin, Chartered
1919 Pennsylvania Avenue, NW, Suite 300
Washington, DC 20006-3404
Counsel for Association of Independent Designated Entities

Timothy E. Welch
Hill & Welch
1330 New Hampshire Avenue, NW, Suite 113
Washington, DC 20036

James F. Lovette
Apple Computer Inc.
1 Infinite Loop, MS 301-4
Cupertino, CA 95014

Timothy E. Welch
Hill & Welch
1330 New Hampshire Avenue, NW, Suite 113
Washington, DC 20036
Counsel for MEBTEL, Inc.

David Cosson
L. Marie Guillory
NTCA
2626 Pennsylvania Avenue, NW
Washington, DC 20036

Lisa M. Zaina
OPASTCO
21 Dupont Circle, NW, Suite 700
Washington, DC 20036

David L. Nace
Lukas, McGowan, Nace & Gutierrez
1819 H Street, NW, 7th Floor
Washington, DC 20006
**Counsel for Alliance of Rural Area Telephone
and Cellular Service Providers**

Harold K. McCombs, Jr.
Duncan, Weinberg, Miller & Pembroke, P.C.
1615 M Street, NW, Suite 800
Washington, DC 20036

James U. Troup
Laura Montgomery
Arter & Hadden
1801 K Street, NW, Suite 400K
Washington, DC 20006
Counsel for Iowa Network Services, Inc.

Blooston, Mordkofsky, Jackson & Dickens
2120 L Street, NW, Suite 300
Washington, DC 20037

Barry R. Rubens, Manager - Regulatory Affairs
Concord Telephone Company
68 Cabarrus Avenue, East
P.O. Box 227
Concord, NC 28026-0227

R. Phillip Baker, Exec. Vice President
Chickasaw Telephone Company
Box 460
Sulphur, OK 73086

David L. Nace
Marci E. Greenstein
Lukas, McGowan, Nace & Gutierrez
1819 H Street, NW, 7th Floor
Washington, DC 20006
Counsel for Pacific Telecom Cellular, Inc.

James D. Ellis
Southwestern Bell Corporation
175 E. Houston, R. 1218
San Antonio, TX 78205

Robert Cook, Chairman & CEO
U.S. Intelco Networks, Inc.
4501 Intelco Loop
Lacey, WA 98503